IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 522 of 2000

in

SPECIAL CIVIL APPLICATIONNo 10306 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH M JANI

Versus

REGISTRAR, METROPOLITIAN MAGISTRATE COURT

Appearance:

MR NS SHETH for Appellant

MR PARESH UPADHYAY for Respondent No. 1, 2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.P.BUCH

Date of decision: 14/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The appellant-original petitioner has assailed the judgment and order dated 21.2.2000 recorded in Special Civil Application No.10306 of 1999 by the learned Single Judge and also the order dated 3.7.2000 passed in Misc.Civil Application No.974 of 2000 in Special Civil Application No.10306/99 passed by the learned Single Judge, whereby, an application for review of the order dated 21.2.2000 came to be dismissed, by invoking aids of the provisions of clause 15 of the Letters Patent Act, 1865.

2. A skeleton projection of facts giving rise to filing a writ petition and failing therein, to the Letters Patent Appeal on hand, may be articulated shortly at this stage.

3. The appellant-original petitioner, who was working as Assistant in the Metropolitan Magistrate Court, Ahmedabad, remained absent from duty without leave or intimation on various occasions. Show cause notices were served on account of his persistent absence from duty. The explanation offered by the petitioner for his absence from the duty were not found favour with the High Court on its administrative side. Therefore, the services of the original petitioner on the post of an Assistant, came to be terminated by an order of Chief Metropolitan Magistrate, Ahmedabad, dated 8.10.1998 w.e.f. 7.9.1998, before office hours.

4. The petitioner also failed in the Administrative Appeal No.9/98 before the High Court on its administrative side as his appeal came to be dismissed on 13.12.1999, which prompted him to enter into fray of legal battle by filing the aforesaid writ petition on 22.12.1999, failing therein, the Letters Patent Appeal, which we deal with, came to be filed on 27.3.2000.

5. We have heard the learned Advocates appearing for the parties. We have also examined the facts and circumstances of the case emerging from the record of the present case. The only contention which has been advanced before us on behalf of the appellant-original petitioner is, that the quantum of punishment under the impugned order is harsh, disproportionate and has practically resulted into economical death. It was in this context, further submitted that looking to the

delinquency, the quantum of punishment by the Disciplinary Authority, is not only disproportionate, but is excessive and harsh. As against that, learned Advocate appearing for the respondents submitted that the proposition of law is such, that if the conscience of the Court is shocked by the nature and the extent of punishment in relation to the type of delinquency, it is always open for the court to consider this aspect for the purpose of evaluating and examining appropriate and expedient arrangement in the light of the given case and the type of the delinquency. Of course, while saying so, he has also supported the impugned order.

6. It is a settled proposition of law in the realm of service jurisprudence that ordinarily the order of disciplinary authority or the Master, as the case may be, should not be interfered with. If such an order is warranted in the light of the type of the delinquency, the nature of the charge, the length of the service of the incumbent and like circumstances and, if the Court finds that the imposition of punishment qua the type of the delinquency is disproportionate, the Court cannot afford to raise its hands in helplessness and remain oblivious. The Court has power to take into consideration all doctrines of proportionality which is very well expounded and fully articulated in various decisions on the point. Of course, in the exercise of powers in relation to the doctrine of the proportionality, which is one of the important organs of the service jurisprudence, it must be shown to the satisfaction of the Court or it must be spelt out that the amount of punishment or quantum of punishment is grossly excessive or disproportionate.

7. In the case on hand, the extreme penalty of termination is imposed on the petitioner for remaining absent without leave in the past. There were several occasions on which this delinquency went on repeated. But that would only indicate that the delinquency or misconduct is established to the hilt. Again it is one aspect and as part of the service jurisprudence, the Court is obliged to address itself as to the extent whether the imposition of the punishment under challenge, is proportionate to the type and the nature of the delinquency proved. Ordinarily, though this falls within the domain of the management, master or disciplinary authority, however, the Court is also obliged to consider as to whether the extreme penalty of termination from service after almost 20 years, on the ground of remaining absent frequently without leave or without intimation to the master is so grave, is so gross that the petitioner

can no longer be tolerated or allowed to continue in the administration as is continued, as his conduct has become incorrigible. Is it so a bad case that he has gone beyond the stage of improvement in the further years of life while being in service ? In our opinion, in the light of the facts of the present case, we have not been able to persuade ourselves to treat this case as falling within the aforesaid aspects. The answer therefore, would be in the negative, as there is no such evidence, so that the delinquent-original petitioner could be permitted to be vested with the same quantum of punishment which is under challenge, imposed by the disciplinary authority. The question would arise is, if his case does not fall in such category as highlighted hereinabove, the extreme penalty of termination could be said to be a justified one ? In our opinion, this is not a case where extreme penalty should be sustained.

8. After having taken into consideration the overall picture emerging from the record of the present case, coupled with the emerging modern trends and waves in the service jurisprudence, especially considering the misconduct or delinquency established, which is only on account of absence from the service, without intimation to the master or disciplinary authority, and of course, frequent and repeatedly, the imposition of penalty of termination by the disciplinary jurisdiction, confirmed by the appellate authority and again confirmed by the learned Single Judge, requires to be put in proper shape. Bearing in mind the celebrated doctrine of proportionality, we find that ends of justice will be met, if the amount of punishment is substituted by penalty of withholding of two increments without future effect. Consequent upon our aforesaid directions, the appellant-original petitioner shall be reinstated on or before 1.12.2000. Obviously, that will take us to the consideration of, what about the backwages, since he is ordered to be reinstated, quashing the termination order. We are conscious of the fact about the relevant and material principle governing the issue of grant of backwages in a case of order culminating into reinstatement quashing the termination. At the same time, the Court cannot afford to turn a Nelson's eye on the factual material aspects attributable and emerging in a given case. The submission on behalf of the appellant-original petitioner-delinquent that 25% of the backwages would be justified, does not satisfy us in the peculiar facts and special circumstances, since the extreme penalty of termination is substituted only by a penalty of withholding of two increments without future effect. Needless to reiterate that there could not be a

'straight jacket' formula for an order of percentage of calculation of backwages, since this issue takes various aspects, circumstances and shades and colour in its seep. But for the special reasons and the circumstances emerging from the scenario of the present matter, we have not been able to persuade ourselves to accede to the request in this behalf for the grant of 25% of the backwages.

9. In the result, the appeal is partly allowed. The impugned judgment and order dated 21.2.2000 is quashed and set aside. The order of termination of the appellant shall stand substituted by a penalty of withholding of two increments without future effect and the respondent authority shall permit the appellant-original petitioner to resume on or before 1.12.2000. In the peculiar facts, the parties are left to bear their own costs. Rule is made absolute to the aforesaid extent.

10. At this stage, Mr N S Sheth, learned Advocate for the appellant submitted that it may be specifically mentioned that the services of the appellant-original petitioner shall be continuous so as to have no any complication in future benefits and particularly pensionary benefits. In fact the nature and type of direction contained in the earlier order hereinbefore, would not require such a clarification as it is inherent and inbuilt. Still however, by way of abundant precaution, it is clarified that the period, from the date of termination till the date of actual reinstatement, will be not considered as break and it will be a continuous period for the purpose of all the service benefits. At the same time, the respondents shall be at liberty to treat this period as leave without pay in order to administratively regularise the said period between the date of termination and the date of actual reinstatement.

14.11.2000 [J N Bhatt, J]
msp
[D P Buch, J.]